

Message Text

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11

ACTION L-02

INFO OCT-01 EUR-12 ISO-00 SCA-01 PM-03 NSC-05 SP-02 SS-15

RSC-01 CPR-01 SCS-03 SAJ-01 PRS-01 CIAE-00 INR-05

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FM AMEMBASSY BELGRADE

TO SECSTATE WASHDC 1233

INFO AMCONSUL ZAGREB

LIMITED OFFICIAL USE BELGRADE 5838

E.O. 11652: N/A

TAGS: CGEN, YO

SUBJ: REPLY TO PRO MEMORIA ON PROTECTION OF DUAL NATIONALS

REF: A. BELGRADE 5837

B. STATE 244422

FOLLOWING IS TEXT OF SUGGESTED REVISION OF DRAFT NOTE TRANSMITTED REF B.

THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS ITS COMPLIMENTS TO THE FEDERAL SECRETARIAT FOR FOREIGN AFFAIRS OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA DN HAS THE HONOR TO REFER TO THE PRO MEMORIA WHICH WAS CONVEYED TO THE AMBASSADOR OF THE UNITED STATES OF AMERICA ON AUGUST 1, 1974.

THE UNITED STATES GOVERNMENT HAS CAREFULLY CONSIDERED THE PRO MEMORIA SUBMITTED THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA. WHILE THAT DOCUMENT DOES PROVIDE FOR CONSULAR PROTECTION OF CERTAIN DETAINED OR ARRESTED PERSONS OF DUAL NATIONALITY, IT DOES NOT ADDRESS THE PROPOSAL OF THE UNITED STATES COMMUNICATED IN NOTE NO. 31 OF THE EMBASSY DATED SEPTEMBER 27, 1973.

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THE UNITED STATES BELIEVES THAT THE SUBJECT MATTER

OF THE UNITED STATES PROPOSAL MERITS FURTHER DISCUSSION FOR REASON GIVEN BELOW, AND THE UNITED STATES WOULD BE PLEASED TO PROVIDE ANY ADDITIONAL CLARIFICATION WHICH IS NEEDED AS WELL AS TO CONSIDER ANY CONSTRUCTIVE PROPOSALS OF THE GOVERNMENT OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA AIMED AT AVOIDING IN THE FUTURE THE PROBLEMS WHICH HAVE DEVELOPED IN THE PAST IN THE ABSENCE OF AN ADEQUATE BILATERAL AGREEMENT.

AS THE UNITED STATES UNDERSTANDS THE YUGOSLAV VIEW, THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA FEELS THAT IMPLEMENTATION OF THE PROPOSED BILATERAL AGREEMENT WOULD RESULT IN A VIOLATION OF BOTH INTERNATIONAL LAW AND DOMESTIC CONSTITUTIONAL LAW OF YUGOSLAVIA. THE UNITED STATES DOES NOT AGREE THAT IMPLEMENTATION OF THE AGREEMENT PROPOSED IN THE SEPTEMBER 1973 NOTE WOULD VIOLATE ANY PRINCIPLES OF INTERNATIONAL LAW. RATHER, THE PROPOSED AGREEMENT IS AIMED AT RESOLVING CERTAIN QUESTIONS RELATING TO THE PROTECTION OF PERSONS OF DUAL NATIONALITY WHICH ARE NOT SETTLED IN INTERNATIONAL LAW. AS THE UNITED STATES HAS STATED IN THE PAST, THE PROPOSAL DOES NOT ATTEMPT TO SETTLE BASIC QUESTIONS OF NATIONALITY, NOR DOES IT GRANT ANY IMMUNITY FROM COMPLIANCE WITH NATIONAL OR LOCAL LAWS TO ANY INDIVIDUAL REGARDLESS OF NATIONALITY. RATHER, THE UNITED STATES PROPOSAL IS AIMED AT DEALING WITH A SERIOUS PROBLEM THAT HAS EXISTED FOR SOME TIME, NAMELY THE GRANTING OF CONSULAR PROTECTION TO CERTAIN PERSONS WHOSE EXPECTATIONS ARE THAT THEY WILL RECEIVE SUCH PROTECTION FROM THE COUNTRY TO WHICH THEY OWE PRIMARY LOYALTY.

THE ESSENCE OF THE PROPOSED RESOLUTION IS A MODUS OPERANDI WHICH WOULD BE APPLIED ON THE BASIS OF RECIPROCITY. IT WOULD GREATLY FACILITATE APPLICATION OF THE RULES OF CONSULAR PROTECTION CONTAINED IN THE VIENNA CONVENTION ON CONSULAR RELATIONS OF 1963 TO WHICH BOTH COUNTRIES ARE PARTIES AND RELATED RULES OF CUSTOMARY INTERNATIONAL LAW. THE AGREEMENT WOULD CONTAIN A SPECIFIC CAVEAT ON THE LIABILITY OF INDIVIDUALS RECEIVING PROTECTION TO THE LAW OF THE RECEIVING STATE AND THUS WOULD AVOID ANY POSSIBILITY OF DISCRIMINATION AMONG PERSONS OF THE SAME NATIONALITY WHO ARE PRESENT IN THE TERRITORY OF ONE OF THE PARTIES TO THE AGREEMENT.

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(COMPLIMENTARY CLOSE).
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